

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

DAVID CARLSEN,

Petitioner,

v.

CITY OF BELLINGHAM,

Respondent,

and

THE BELLINGHAM TENNIS CLUB, LLC and
WILLIAM T. GEYER,

Intervenors.

Case No. 12-2-0014

FINAL DECISION AND ORDER

SYNOPSIS

Petitioner Carlsen challenged the City of Bellingham's adoption of the Fairhaven Neighborhood and Urban Village Plan on grounds that it was inconsistent with the City comprehensive land use plan, capital facilities and transportation plans and did not meet several GMA goals. Petitioner argued the City was responsible for providing sufficient parking facilities. The Board found that publicly-financed parking facilities are not a GMA requirement and the City had analyzed and addressed transportation and parking needs in Fairhaven. The City adopted a new plan and development regulations to meet the needs of a growing population and parking demands. Their action included adopting progressive transportation demand management policies, requiring the private sector to provide parking and allowing infilling for urban residential and commercial ventures within Fairhaven. The Board did not find the City was not guided by GMA goals nor did it find inconsistency violations. The case is closed and dismissed.

I. PROCEDURAL HISTORY

Petition for Review

Petitioner David Carlsen is a small business owner in Fairhaven who opposed the City of Bellingham's Ordinance repealing the Fairhaven Neighborhood Plan and replacing it with the Fairhaven Neighborhood and Urban Village Plan (FNUVP). Petitioner Carlsen contested the City of Bellingham's (City) Ordinance, arguing that parking would be compromised by the City's action and that the City had not fulfilled its obligations to supply parking in Fairhaven. Pursuant to RCW 36.70A.290, Petitioner appealed to the GMHB on October 12, 2012, challenging Ordinance 2012-08-041 as approved by the Bellingham City Council on August 13, 2012. The Petition was assigned Case No. 12-2-0014 by this Board.

Hearing on the Merits

A Hearing on the Merits was held in the City of Bellingham, Washington on March 8, 2013. Petitioner David Carlsen appeared through his attorney, Jeffery Bode. The City appeared through its attorney, Alan Marriner, and Intervenors appeared through their attorney, Douglas Robertson. Board members Raymond Paoella, Cheryl Pflug, and Nina Carter were present with Ms. Carter presiding.

II. PRELIMINARY MATTERS

Motions

The Parties filed several motions during the course of this case. The motions were as follows:

1. Motion to Intervene by the Bellingham Tennis Club, LLC (BTC) and William T. Geyer (Geyer) on behalf of the City of Bellingham, filed December 5, 2012.
2. City of Bellingham's Motion to Dismiss Legal Issues No. 1, No. 2 and Part of No. 3, filed December 6, 2012.
3. Petitioner's Response to City's Motion to Dismiss, filed December 17, 2012.
4. City of Bellingham and Intervenors' Joint Motion to Add to Index and Supplement Record, filed February 12, 2013.

- 1 5. Petitioner's Motion to Supplement the Record, filed February 19, 2013.
- 2 6. Respondent City of Bellingham's Response to Petitioner's Motion to Supplement the
- 3 Record, filed February 25, 2013.
- 4 7. Respondent City of Bellingham's Motion to Strike Petitioner's Exhibits, filed February
- 5 25, 2013.
- 6 8. Petitioner's Response to the City's Motion to Strike, filed February 28, 2013.
- 7 9. Petitioner's Request for Official Notice of Post-Record Facts, filed March 1, 2013.
- 8 10. City's Response to Petitioner's Request for Official Notice of Post-Record, filed
- 9 March 7, 2013.
- 10
- 11

12 The Bellingham Tennis Club and William T. Geyer moved to intervene on behalf of the City
13 because their interests may be impaired with the disposition of the Petition. The City
14 supported the motion.¹ Petitioner filed an objection to the motion² and BTC and Geyer filed
15 a Response to Objection to Motion to Intervene³ which is allowed into the record in
16 accordance with WAC 242-03-550(3).⁴ With some limitations, the Board granted the motion
17 to intervene to the Bellingham Tennis Club, LLC and William T. Geyer.⁵

18
19 The City filed a Motion to Dismiss Legal Issues No. 1, No. 2, and Part of No. 3 because the
20 City does not regard parking as a public service, public facility or transportation facility
21 regulated under the Growth Management Act (GMA). In its motion, the City argued that the
22 Board lacks subject matter jurisdiction to consider these issues.⁶ Petitioner opposed the
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26 ¹ City of Bellingham's Response to Motion to Intervene, filed December 17, 2012.

27 ² Petitioner's Opposition to Motion to Intervene of Bellingham Tennis Club and William T. Geyer, filed
December 17, 2012.

28 ³ Response to Objection to Motion to Intervene, filed December 26, 2012.

29 ⁴ "WAC 242-03-550 Motions — General requirements

30 (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a
31 hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. (2) The deadline
32 for filing certain motions is established in the prehearing order. No written motion may be filed after the date
specified in the order without written permission of the presiding officer which may be granted for good cause
shown. (3) Unless the prehearing order or other order in the case establishes a different deadline, a party
served with a motion shall have ten days from the date of service of the motion to respond to it. ***The presiding
officer may allow the moving party to reply to the response.*** (emphasis added)

⁵ Order on Motion to Intervene, December 27, 2012.

⁶ Respondent City of Bellingham Motion to Dismiss, December 6, 2012.

1 City's motion.⁷ The Board denied the City's motion finding the City's comprehensive plan
2 amendments were within the Board's jurisdiction and the City's reference to transportation
3 and traffic management systems related to the City's comprehensive plan.

4
5 The City and Intervenor filed a Joint Motion to amend the index to include an August 1,
6 2012, letter from William Geyer and to supplement the Record with a capacity analysis by
7 Chris Behee; the capacity analysis used facts and information considered by the City as it
8 made its decision on parking in Fairhaven.⁸ Petitioner did not respond to the City and
9 Intervenor's Joint Motion. The Board granted the Joint Motion to supplement the record with
10 the Geyer letter and the Behee analysis.⁹

11
12 Petitioner filed a Motion to Supplement the Record¹⁰ with a document, which he refers to as
13 Tab O "Parking District Assessment Letter," claiming this 1994 letter would "shed a small,
14 but useful light on the opaque financing of public parking within the Parking District."¹¹ The
15 City opposed Petitioner's Motion to Supplement the Record with Tab O arguing the 1994
16 letter was not before the City when it developed the record for the challenged ordinance.¹²
17 In addition, Respondent moved to strike exhibits in Petitioner's Reply Brief which were also
18 not part of the City's record.¹³ (See Tabs J, K, L and N.)¹⁴

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21 Lastly, Petitioner requested the Board take official notice of post-record facts: the City's
22 approval of an over-height building permit; approval of a design review and critical area
23 permit; and the fact that "The Pit" has been listed for sale for condominiums.¹⁵ Petitioner
24 argues these facts are important to understand how the City violated GMA Goals 1 and 12
25 and RCW 36.70A.070 consistency and concurrency requirements. Petitioner argues these
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28 ⁷ Petitioner's Opposition to City's Motion to Dismiss, December 17, 2012.

29 ⁸ Respondent and Intervenor's Motion to Add to Index and Supplement the Record, February 12, 2013

30 ⁹ Order on Motions to Supplement, March 1, 2013.

31 ¹⁰ Petitioner's Motion to Supplement the Record, February 19, 2013.

32 ¹¹ *Id.* at 1.

¹² Respondent Response to Petitioner's Motion to Supplement the Record, February 25, 2013.

¹³ Respondent's Motion to Strike Petitioner's Exhibits which are not part of the record, February 25, 2013.

¹⁴ Tab J – "parking spots wanted;" Tab K – "Zipcar and fair prices for public spaces" "Zipcar, Zapped by Parking;" Tab L – "City Plan to Allow Residential Zipcar Parking Sparks Controversy;" Tab N – "In Lieu of Required Parking."

¹⁵ Petitioner's Request for Official Notice, March 1, 2013.

1 facts show that removing the ability to build parking facilities on these lots means a loss of
2 capacity to add new public parking.¹⁶ The City objected, arguing that Petitioner's request
3 raised new legal arguments and the Request should be denied.¹⁷
4

5 Prior to the Hearing on the Merits, the Board did not rule on the following:

- 6 • Petitioner's Motion to Supplement the Record;¹⁸
- 7 • City's Response to Petitioner's Motion to Supplement the Record;¹⁹
- 8 • City's Motion to Strike Petitioner's Exhibits;²⁰
- 9 • Petitioner's Request for Official Notice of Post-Record Facts;²¹ and
- 10 • City's Response to Petitioner's Request for Official Notice of Post-Record Facts.²²
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- 12

13 The Board did not issue orders prior to the HOM, but noted at the HOM that it would do so
14 in the Final Decision and Order (FDO). The Board heard oral arguments at the HOM from
15 both parties about the motions and responses and the Board's decisions are below.
16

17 The Board's legal authorities on supplementing the record and exhibits are:

18 **RCW 36.70A.290**

19 Growth management hearings board — Petitions — Evidence. (1) All requests
20 for review to the growth management hearings board shall be initiated by filing
21 a petition that includes a detailed statement of issues presented for resolution
22 by the board. The board shall render written decisions articulating the basis for
23 its holdings. The board shall not issue advisory opinions on issues not
24 presented to the board in the statement of issues, as modified by any
prehearing order. . .

25 (4) The board shall base its decision on the record developed by the city,
26 county, or the state and supplemented with additional evidence *if the board*
27 *determines that such additional evidence would be necessary or of substantial*
28 *assistance to the board in reaching its decision.* (emphasis added)
29

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31 ¹⁶ *Id.* at 3.

32 ¹⁷ City Response to Petitioner's Request for Official Notice of Post-Record Fact, March 7, 2013 at 2.

¹⁸ February 19, 2013.

¹⁹ February 25, 2013.

²⁰ February 25, 2013.

²¹ March 1, 2013.

²² March 7, 2013.

WAC 242-03-520

Exhibits.

Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs or as exhibits allowed pursuant to a motion to supplement and attached thereto.

Exhibits shall be documents, portions of documents, or transcriptions of proceedings listed in the index, unless a motion to supplement the record has been granted. Exhibits attached to motions to supplement shall be cross-referenced in briefs for the hearing on the merits. The presiding officer may, at her/his discretion, require copies of all exhibits to be attached to both the motion to supplement and the hearing on the merits brief, or may just allow the exhibits to be cross-referenced. This requirement will be stated in the order on motion to supplement.

WAC 242-03-565

Motion to supplement the record.

Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence.

(1) A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and shall state the reasons why such evidence would be necessary or of substantial assistance to the board in reaching its decision, as specified in RCW 36.70A.290(4). The board may allow a later motion for supplementation on rebuttal or for other good cause shown.

(2) Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such evidence to the board's decision concerning invalidity.

(3) Exhibits attached to motions to supplement shall be cross-referenced in the briefs for the hearing on the merits, unless the presiding officer, in the order on motion to supplement, requires copies of supplemental exhibits to be attached also to the hearing on the merits brief.

WAC 242-03-640

Official notice — Material facts

(1) In the absence of conflicting evidence, the board or presiding officer, upon request made before or during a hearing, may officially notice . . .

(b) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(2) Request. Any party may request, orally or in writing that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative . . .

(4) Statement of official notice.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

Board Decisions on Motions

- Petitioner's Motion to Supplement the Record²³
- City's Response to Petitioner's Motion to Supplement the Record²⁴

In regards to Petitioner's Motion to Supplement the Record with Tab O (1994 letter regarding financial participation in the Parking District), the Board finds that although the letter was not before the City Council when it adopted the challenged ordinance, the Board found the information useful. The letter clarified how the Parking District was established and created its funding mechanism. This assisted the Board in understanding how parking was intended to be addressed in Fairhaven. Pursuant to WAC 242-03-565(2), the Board

²³ February 19, 2013.

²⁴ February 25, 2013.

1 found the letter provided “evidence . . . of substantial assistance to the board in reaching its
2 decision.” **The motion to supplement the record is granted and Tab O is admitted.**

3
4 • City's Motion to Strike Petitioner's Exhibits²⁵

5 Regarding the City's Motion to Strike Petitioner's Exhibits Tab J, K, L and N, the City argued
6 that Petitioner failed to include the exhibits in a Motion to Supplement the Record and the
7 exhibits raised new arguments.²⁶ The City requests the Board disallow Petitioner's exhibits
8 into the record. Petitioner in oral argument at the Hearing on the Merits claimed the exhibits
9 demonstrate the free-market principle used by the City to supply parking is flawed because
10 other cities have difficulties relying on free market principles to meet parking demands.
11

12 The Board notes that Tabs J, K, L and N relate to a web page about Zipcars and articles on
13 Zipcars, residential Zipcar parking issues, and the concept of “in lieu of required parking.”
14 These exhibits were not before the City during the challenged action. They were not
15 “documents, portions of documents, or transcriptions of proceedings listed in the index” as
16 required in WAC 242-03-520. Petitioner did not request the record to be supplemented with
17 these exhibits. In WAC 242-03-565 (1) and (2), the Board may allow new evidence into the
18 record if it is properly requested through a motion for supplementation and states the
19 reasons why the evidence is necessary. Further, evidence arising subsequent to adopting a
20 challenged action – such as Tabs J, K, L, and N – would need to be supported by a motion
21 showing how the evidence relates to invalidity. Petitioner has not followed the Board's
22 procedures by filing a motion to supplement the record with evidence from Tabs J, K, L or N
23 nor has he made a convincing argument the evidence will assist the Board in its
24 deliberations about alleged GMA violations. **The Board strikes from the record Tabs J,**
25 **K, L and N.**
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²⁵ February 25, 2013.

²⁶ City's Motion to Strike at 2, February 25, 2013.

- Petitioner's Request for Official Notice of Post-Record Facts²⁷
- City's Response to Petitioner's Request for Official Notice of Post-Record Facts²⁸

Petitioner argues the post-record facts regarding City approval of an over-height building permit, approval of design review and critical area permits, and notice of potential sale of "the Pit" property demonstrate the City is reducing opportunities to build parking facilities. Petitioner states the permit approvals and potential sale of "the Pit" show that the City's actions were inconsistent with the City's policy to provide adequate parking.²⁹ The approved permits and the potential sale of "the Pit" are known facts to the Bellingham City Council prior to adopting the challenged action. Therefore, the Board presumes that conflicts arising from the permits were addressed and determined by the City Council. Also, Petitioner does not convince the Board that the potential sale of the Pit is somehow a material fact that should be officially noticed under WAC 242-03-640. Petitioner introduces new legal arguments not raised in his Prehearing or Reply Briefs. The Board's role is not to supplant the City Council's decision; its role is to determine if those decisions comply with the Growth Management Act. Nor is the Board's role to allow new arguments into the record. Petitioner Carlsen's Request for Official Notice is not persuasive. **The Board denies Petitioner's Request for Official Notice of Post-Record Facts.**

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.³⁰ This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the City is not in compliance with the GMA.³¹

²⁷ March 1, 2013.

²⁸ March 7, 2013

²⁹ Petitioner's Request for Official Notice at 4, March 1, 2013.

³⁰ RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable development regulations] comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

³¹ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

1 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
2 noncompliant plans and development regulations.³² The scope of the Board's review is
3 limited to determining whether a City has achieved compliance with the GMA only with
4 respect to those issues presented in a timely petition for review.³³ The GMA directs that the
5 Board, after full consideration of the petition, shall determine whether there is compliance
6 with the requirements of the GMA.³⁴ The Board shall find compliance unless it determines
7 that the City's action is clearly erroneous in view of the entire record before the Board and in
8 light of the goals and requirements of the GMA.³⁵ In order to find the City's action clearly
9 erroneous, the Board must be "left with the firm and definite conviction that a mistake has
10 been committed."³⁶

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13 In reviewing the planning decisions of cities and counties, the Board is instructed to
14 recognize "the broad range of discretion that may be exercised by counties and cities" and
15 to "grant deference to counties and cities in how they plan for growth."³⁷ However, the City's
16 actions are not boundless; their actions must be consistent with the goals and requirements
17 of the GMA.³⁸

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21 ³² RCW 36.70A.280, RCW 36.70A.302.

22 ³³ RCW 36.70A.290(1).

23 ³⁴ RCW 36.70A.320(3).

24 ³⁵ RCW 36.70A.320(3).

25 ³⁶ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(citing to *Dept. of Ecology v.*
PUD District No. 1 of Jefferson County, 121 Wn.2d 179, 201, 849 P.2d 646 1993); *See also, Swinomish Tribe,*
et al. v. WWGMHB, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d
488, 497-98, 139 P.3d 1096 (2006).

26 ³⁷ RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be
27 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
28 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
29 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
30 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
31 while this chapter requires local planning to take place within a framework of state goals and requirements, the
32 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community."

³⁸ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). *See also, Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and
capricious standard. *Id.* at 435, n.8.

1 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate
2 that the challenged action taken by the City is clearly erroneous in light of the goals and
3 requirements of the GMA.

4 5 **IV. BOARD JURISDICTION**

6 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2).
7 The Board finds Petitioner has standing to appear before the Board, pursuant to RCW
8 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the petition
9 pursuant to RCW 36.70A.280(1).
10

11 **V. STATEMENT OF FACTS**

12 The Board makes the following findings of fact:³⁹
13

14 Fairhaven is located in the south end of the City of Bellingham approximately two miles
15 south of the City's central business district.⁴⁰ It has a variety of commercial and residential
16 uses, tourist and mixed residential/commercial uses, a marine industrial waterfront, various
17 transportation modes and intact historic buildings.⁴¹ Fairhaven's historic development
18 pattern was based on small lots with no alleys and limited parking.
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21 In August 1994, the City established the Fairhaven Parking District to address parking by
22 allowing property owners to pay into a parking district to build more parking spaces in
23 consideration for the City's agreement to waive certain parking requirements for some
24 development.⁴² A similar parking district was approved in 2003 for a nearby mixed use
25 development in Fairhaven.⁴³ Bellingham Municipal Code (BMC) 20.37.350 governs both
26 parking districts.⁴⁴
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31 ³⁹ Documents in the record are referred to by their index number.

32 ⁴⁰ Respondent's Pre-Hearing Brief Ex. 1, CC 76 (13) (February 11, 2013).

⁴¹ *Id.* Ex. 1, CC-76 (22).

⁴² *Id.* Ex. 1, CC-76 (34) and Ex. 2 PIA-1(1 and 9).

⁴³ *Id.* Ex. 1, CC-76 (34) and Ex. 5 PIA 2(1 and 6).

⁴⁴ *Id.* Ex. 1, CC-76 (130-132).

1 Recently, as population and development increased in Fairhaven, and demand for parking
2 remained a concern, the City decided it should update its Fairhaven neighborhood plan.
3 Starting in 2007, the City conducted a public planning process to update an existing 1980
4 plan.⁴⁵

5
6 On August 7, 2012 the City adopted Ordinance 2012-08-041 repealing the 1980 Fairhaven
7 Neighborhood Plan and replacing it with a new Fairhaven Neighborhood and Urban Village
8 Plan (FNUVP).⁴⁶ At the same time, the City amended its development regulations in BMC
9 Title 20 and Title 21 to implement the new FNUVP.⁴⁷ The new plan and development
10 regulations are incorporated into the City's comprehensive plan.⁴⁸ In the FNUVP, the City
11 adopted goals and policies for design review, historic resources, energy efficiency, land
12 uses, parking, natural environment, multi-modal transportation, and capital facilities.⁴⁹ As
13 part of the FNUVP, the City decreased overall building heights and some development
14 potential in Fairhaven.⁵⁰

15
16
17 The City hired Transpo to complete a Parking Study for Fairhaven. The study analyzed
18 existing conditions, forecasted future demand, and recommended several options for future
19 transportation needs.⁵¹ As a result of the study and to address future parking needs, the
20 City created a Parking Taskforce charged with developing and recommending to the City
21 Council a unified parking strategy, recommendations to implement the strategy and funding
22 alternatives. Their recommendations are due to the City Council by August 2014.

23
24 The City operates five city-owned parking facilities throughout Bellingham, but does not own
25 or operate public parking facilities in Fairhaven.⁵²

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30 ⁴⁵ *Id. Ex. 1*, CC-76 (13, 16 and 18).

31 ⁴⁶ *Id. Ex. 1*, CC-76 (9).

32 ⁴⁷ *Id. Ex. 1*, CC-76 (For overview see 3-7 and for details see Exhibit G at 117-134).

⁴⁸ *Id. Ex. 1*, CC-76 (14).

⁴⁹ *Id. Ex. 1*, CC-76 (1-58).

⁵⁰ *Id. Ex. 2*, CSD-10 (1) and *Ex. 3*, CSD-7(1).

⁵¹ *Id. Ex. 6*, TPD-72.

⁵² Bellingham Comprehensive Plan, Capital Facilities Chapter. *Attachment 2* at CF-60.

VI. ISSUES AND DISCUSSION

1. Does Ordinance 2012-08-041 fail to be guided by goals 1, 3, 5, and 12 (RCW 36.70A.020(1), (3), (5), and (12)), and fail to comply with the requirements of RCW 36.70A.070(preamble), .070(3), and .070(6) by amending the City of Bellingham Comprehensive Plan and Zoning Code to create new planning and zoning districts that would allow an intensity of development that would not be adequately served by on- and off-street public and private parking facilities?
2. Does Ordinance 2012-08-041 fail to be guided by goal 12 (RCW 36.70A.020(12)), and fail to comply with the requirements of RCW 36.70A.070(preamble), .070(3), and .070(6) by amending the City of Bellingham Comprehensive Plan and Zoning Code to create new planning and zoning districts that require on- or off-street public parking facility improvements for which financing plans meeting the requirements of RCW 36.70A.070(3) and .070(6) do not exist?
3. Does Ordinance 2012-08-041 fail to be guided by goals 1, 3, 5, and 12 (RCW 36.70A.020(1), (3), (5) and (12)), and fail to comply with RCW 36.70A.130(d) by amending the Bellingham Comprehensive Plan and adopting development regulations that are not coordinated or consistent with and do not implement either those Visions, Goals, and Policies of the Comprehensive Plan's Capital Facility and Transportation elements that affect parking, or the Parking Requirements of the Bellingham Municipal Code?
4. Does the continued validity of Ordinance 2012-08-041 substantially interfere with the fulfillment of the goals of Chapter 36.70A RCW by allowing the vesting of development projects to a noncompliant ordinance?

A. Abandoned Issues

The Board's Rules of Practice and Procedure provide: "Failure by [a petitioner] to brief an issue shall constitute abandonment of the unbriefed issue."⁵³ The Board has stated "[i]nadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed abandoned."⁵⁴ Further, the Board has held, "An issue is briefed when legal argument is provided; it is not sufficient for a petitioner to make conclusory statements, without explaining how, as the law applies to the facts

⁵³ WAC 242-03-590(1).

⁵⁴ *Sky Valley, et al. v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider and Correct (Apr. 15, 1996), at 3.

1 before the Board, a local government has failed to comply with the Act.”⁵⁵ In this case,
2 Petitioner’s Pre-Hearing Brief and Reply Brief failed to provide a legal argument about RCW
3 36.70A.070 (preamble), and pursuant to WAC 242-03-590(1), this sub-issue is **abandoned**.
4

5 ***Issue No. 1 – Failure to meet RCW 36.70A.020(1), (3), (5), and (12) and***
6 ***Failure to meet RCW 36.70A.070(3) and (6)***

7 **Legal Authorities**
8

9 **RCW 36.70A.020(1), (3), (5), and (12)**

10 (1) Urban growth. Encourage development in urban areas where adequate
11 public facilities and services exist or can be provided in an efficient manner.

12 (3) Transportation. Encourage efficient multimodal transportation systems that
13 are based on regional priorities and coordinated with county and city
14 comprehensive plans.

15 (5) Economic development. Encourage economic development throughout the
16 state that is consistent with adopted comprehensive plans, promote economic
17 opportunity for all citizens of this state, especially for unemployed and for
18 disadvantaged persons, promote the retention and expansion of existing
19 businesses and recruitment of new businesses, recognize regional differences
20 impacting economic development opportunities, and encourage growth in areas
21 experiencing insufficient economic growth, all within the capacities of the state's
22 natural resources, public services, and public facilities.

23 (12) Public facilities and services. Ensure that those public facilities and
24 services necessary to support development shall be adequate to serve the
25 development at the time the development is available for occupancy and use
26 without decreasing current service levels below locally established minimum
27 standards.

28 **RCW 36.70A.070(3) and (6)**

29 (3) A capital facilities plan element consisting of: (a) An inventory of existing
30 capital facilities owned by public entities, showing the locations and capacities
31 of the capital facilities; (b) a forecast of the future needs for such capital
32 facilities; (c) the proposed locations and capacities of expanded or new capital
facilities; (d) at least a six-year plan that will finance such capital facilities within

⁵⁵ *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7; *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008), at 7-8.

1 projected funding capacities and clearly identifies sources of public money for
2 such purposes; and (e) a requirement to reassess the land use element if
3 probable funding falls short of meeting existing needs and to ensure that the
4 land use element, capital facilities plan element, and financing plan within the
5 capital facilities plan element are coordinated and consistent. Park and
6 recreation facilities shall be included in the capital facilities plan element.

6 (6) A transportation element that implements, and is consistent with, the land
7 use element.

8 (a) The transportation element shall include the following sub-elements . . .

9 (iv) Finance, including . . .

10 (B) A multiyear financing plan based on the needs identified in the
11 comprehensive plan, the appropriate parts of which shall serve as the basis for
12 the six-year street, road, or transit program required by RCW 35.77.010 for
13 cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public
14 transportation systems. The multiyear financing plan should be coordinated with
15 the ten-year investment program developed by the office of financial
16 management as required by RCW 47.05.030.

16 **Positions of the Parties**

17 Petitioner alleges as follows:

18 Petitioner argues the parking supply provided by the Parking District falls short of standards
19 required in BMC 20.12.010 B 3.⁵⁶ Petitioner critiques the City's parking study and the City's
20 Transportation Commission discussions about pedestrian-only streets and concludes the
21 "Parking District waivers have placed such great demands on public parking that the
22 potential loss of any of it has become a legitimate concern to businesses that depend on
23 it."⁵⁷

24
25
26 Next, in regard to Goal 1 to promote urban growth where urban facilities are available,
27 Petitioner argues the City's challenged action creates more density without adequate
28 parking. The City's reliance on "demand-reductions strategies depends on changing
29 peoples' behavior," which will require time, and within that time period any available sites for
30 public parking will have been developed. The City's action sets up "such a risk that the last
31
32

⁵⁶ Petitioner's Corrected Pre-Hearing Brief at 5 (January 23, 2013).

⁵⁷ *Id.* at 6.

1 best chance to add supply will be lost.” Petitioner argues this “is not an efficient way to
2 provide parking.”⁵⁸

3
4 For Goal 3, Petitioner argues the GMA goal for multi-modal transportation is thwarted by an
5 inadequate parking supply. This inadequacy forces drivers to other locations which causes
6 the transportation system to be inadequate. Further, the City’s challenged action is not
7 coordinated with the City’s Capital Facilities Plan policy to “provide an adequate mix of
8 parking. . . .”⁵⁹

9
10 Regarding Goal 5, Petitioner argues the City has not encouraged economic development.
11 When the City adopted the FNUVP, it increased height limits which will bring in more
12 development without parking. “Raising height limits cannot help merchant tenants or owner-
13 occupants of existing small buildings with an already inadequate supply of parking.”⁶⁰
14 Lastly, for Goal 12, Petitioner argues this Goal is not met because the City did not identify
15 minimum service levels standards for public parking in Fairhaven and the City falls short of
16 existing parking standards. Thus, parking supply will not meet public facility needs as
17 required in Goal 12.⁶¹

18
19
20 Petitioner’s reply brief states the City is responsible for ensuring public parking supports
21 development and that a plan for parking should have been completed before adopting the
22 FNUVP, which Petitioner contends is contrary to the City’s Capital Facilities Plan and GMA
23 Goals 1, 5, and 12.⁶²

24
25 City of Bellingham and Intervenor allege as follows:

26
27 The City responds that its Parking Study showed an adequate supply of parking to meet the
28 demand in Fairhaven.⁶³ The City’s parking policy requires private property owners to
29 provide parking under BMC 20.12.350; requirements are minimum, not maximum allowed.

30
31
32 ⁵⁸ Petitioner’s Corrected Pre-Hearing Brief at 7 (January 23, 2013).

⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 7

⁶¹ *Id.* at 7.

⁶² Petitioner’s Corrected Reply Brief at 9 and 10 (February 22, 2013).

⁶³ Respondent’s *Ex.* 6 at TPD-72.

1 Petitioner's argument that density is increasing is not found in the record because the City
2 decreased overall building height allowances in Fairhaven.

3
4 Petitioner failed to show that the City did not meet GMA Goals. For Goal 1, Petitioner failed
5 to show that "Fairhaven lacks adequate public facilities or services to provide for urban
6 growth"⁶⁴ where parking facilities are not "public facilities" under the GMA.⁶⁵ For Goal 3,
7 Petitioner did not substantiate his claim that parking plays a key role in multi-modal
8 transportation systems.⁶⁶ The City meets Goal 5 through FNUVP's parking chapter, the
9 associated development regulations and the City's comprehensive plan because they
10 reduce the cost of development and encourage less costly transportation alternatives to the
11 automobile.⁶⁷ Finally, the City complies with Goal 12 because parking facilities are not
12 defined as a "public facility or service" under the GMA.⁶⁸

13
14
15 Intervenor alleges as follows:

16 Petitioner makes unsupported claims and points to no facts in the record to support his
17 claims. The City's FNUVP "described in copious detail a wide variety of parking
18 management strategies that could be implemented to address the possible parking
19 stress."⁶⁹ In addition, the City established a Parking Taskforce to address parking issues in
20 the future. Intervenor concurs with the City's statements about meeting GMA Goals.⁷⁰

21 22 23 **Board Discussion and Analysis**

24 Petitioner did not make legal arguments showing that the City violated RCW 36.70A.070(3)
25 and (6) requirements to adopt a capital facilities plan. Accordingly, these unbriefed sub-
26 issues are deemed abandoned under WAC 242-03-590(1).

27
28 RCW 36.70A.070(3) and (6) requires the city to inventory existing capital facilities, forecast
29 future needs, propose location for future facilities, develop 6-year financing plans and
30

31 ⁶⁴ Respondent's Pre-Hearing Brief at 22 (February 11, 2013).

32 ⁶⁵ *Id.* at 23.

⁶⁶ *Id.* at 23.

⁶⁷ *Id.* at 23.

⁶⁸ *Id.* at 23.

⁶⁹ Intervenor's Pre-Hearing Brief at 10 (February 12, 2013).

⁷⁰ *Id.* at 12.

1 reassess land uses to ensure coordination. Parks and recreation facilities are the only
2 specific requirement to be included in the plan. The City completed a Transportation
3 Improvement Program⁷¹ for their Comprehensive Plan Transportation Chapter⁷² to meet the
4 requirements of .070(3) and (6).

5
6 The City chose not to build or operate public parking facilities in Fairhaven. This is not a
7 violation of RCW 36.70A.070(3) or (6) because this statute does not require publicly-
8 financed parking facilities to be included as a capital facility nor does it define them as such.
9 Whether or not to include parking facilities in a capital facilities plan is a decision within the
10 discretion of local governments.

11
12 In this case, Bellingham's policies employ currently-accepted transportation demand
13 management strategies to increase the use of alternative modes of transportation. These
14 policies range from setting targets to reduce automobile dependent transportation, allowing
15 the market to provide parking, promoting infilling and urban villages for compact housing
16 and commercial uses, encouraging car-sharing and "unbundling" (separate pricing) for
17 parking spaces, eliminate "free" parking in urban villages.⁷³ The City appropriately planned
18 ahead for less car-dependent land uses and lifestyles for an ever-increasing population.
19
20

21 The Board is not persuaded by Petitioner's arguments that the City violated GMA goals. For
22 Goal 1, the City has accommodated and planned for urban growth by encouraging compact
23 urban residential, retail and commercial development in Fairhaven. The transportation Goal
24 3 is met by the City's Transportation Improvement Plan, its parking policies and
25 development regulations to require private land owners to provide parking and a task force
26 to review future parking needs and recommend options. The City's economic development
27 for Fairhaven meets Goal 5 because the City retains current businesses and recruits future
28 business by allowing infilling and creating the parking task force to address emerging
29
30

31
32 ⁷¹ Respondent's Pre-Hearing Brief *Ex. 7*, Six-Year Transportation Improvement Program (TIP) (February 11, 2013).

⁷² Respondent's Pre-Hearing Brief at 16-19 and specifically Respondent's Attachment 6 (February 11, 2013).

⁷³ Respondent's Pre-Hearing Brief Attachment 6 Transportation Policies at T 74-76 and Attachment 7 at LU 33-56 (February 11, 2013).

1 issues. Lastly, Goal 12 is met by the City's transportation strategies which will ensure
2 adequate public facilities are available to meet the demand.

3
4 Petitioner's overall complaint that the City did not comply with GMA Goals is not
5 substantiated by legal argument. Petitioner supplies only conclusory statements about the
6 City's non-compliance with GMA Goals.⁷⁴ Petitioner failed to satisfy his burden to prove
7 that the City was not guided by the GMA's Planning Goals.
8

9 **Conclusion**

10 The Board finds and concludes Petitioner did not meet his burden of proof to demonstrate
11 clearly erroneous action and non-compliance with RCW 36.70A.070(3) and (6) nor has he
12 demonstrated that the City was not guided by GMA Goals in RCW 36.70A.020(1), (3), (5),
13 and (12). **Issue 1 is dismissed.**
14

15 **Issue No. 2 – Failure to meet GMA Goal 12 and** 16 **Failure to meet RCW 36.70A.070(3), and (6)** 17

18 **Legal Authorities**

- 19
 - See page 14 for Goal (12) in RCW 36.70A.020
 - See page 14 for RCW 36.70A.070(3) and (6)

21 **Positions of the Parties**

22 Petitioner:

23
24 Petitioner argues Goal 12 requires the City to ensure that "the parking supply was adequate
25 for the development to follow."⁷⁵ Petitioner also argues that because the City does not have
26 a financing plan for public parking transportation facilities in Fairhaven, the City is in non-
27 compliance with RCW 36.70A.070(3)(d) and .070(6)(a)(iv)(B) which states:

28 (B) A multiyear financing plan based on the needs identified in the
29 comprehensive plan, the appropriate parts of which shall serve as the basis for
30 the six-year street, road, or transit program required by RCW 35.77.010 for
31 cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public
32 transportation systems. The multiyear financing plan should be coordinated with

⁷⁴ Petitioner's Corrected Pre-Hearing Brief at 7 (January 23, 2013).

⁷⁵ *Id.* at 8.

1 the ten-year investment program developed by the office of financial
2 management as required by RCW 47.05.030.

3 City of Bellingham and Intervenor:

4 The City responds by stating the GMA does not require a six-year financing plan nor multi-
5 year financing plans for public parking facilities because they are not defined as “capital
6 facilities” under RCW 36.70A.070(3).⁷⁶ Further, the City argues “public parking facilities” are
7 not subject to concurrency requirements under Goal 12 because they are not defined as
8 public facilities under GMA.⁷⁷ Intervenor concurs with the City.⁷⁸

10 11 **Board Discussion and Analysis**

12 Petitioner argues the City lacks a six-year or other multi-year financing plan for a public
13 parking facility in Fairhaven. He does not cite a GMA requirement for such a financing plan
14 for public parking facilities. Petitioner makes conclusory statements about the City’s need
15 for such a plan. The Board cannot find a GMA violation or non-compliance on the part of
16 the City as it does not find any express requirement in the GMA that local governments
17 must include in their Transportation Element a plan to finance public parking facilities.
18

19 20 **Conclusion**

21 The Board finds and concludes Petitioners have not met their burden of demonstrating
22 clearly erroneous action and non-compliance with RCW 36.70A.070(3) and (6) and they
23 failed to show the City was not guided by GMA Planning Goal 12 in RCW 36.70.020(12).

24 **Issue 2 is dismissed.**

25
26 ***Legal Issue No. 3 – Non-Compliance with RCW 36.70A.020(1),(3),(5) and (12) and***
27 ***Non-Compliance with RCW 36.70A.130(d)***

28 29 **Legal Authorities**

- 30 • See page 14 for RCW 36.70A.020 Goals
- 31 • See page 14 for RCW 36.70A.030(3) and (6)

32

⁷⁶ Respondent’s Pre-Hearing Brief at 23 (February 11, 2013).

⁷⁷ *Id.* at 24.

⁷⁸ Intervenor’s Pre-Hearing Brief at 12 (February 12, 2013).

RCW 36.70A.130(d) Comprehensive plans

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

Position of the Parties

Petitioner alleges as follows:

In Issue 3, Petitioner does not sufficiently brief how the City failed to be guided by GMA goals. Rather, Petitioner briefs GMA Goal violations under Issue 1.⁷⁹ Thus, the Board only addresses Petitioners RCW 36.70A.130(d) claims here.

Petitioner's Legal Issue No. 3 claims the City's FNUVP is non-compliant with RCW 36.70A.130(d) because the FNUVP increases parking demand, but does nothing to increase parking supply.⁸⁰ Petitioner claims that BMC 20.37.350 only allows the City to grant waivers for parking requirements when waivers are consistent with an area-wide parking plan and a mechanism for parking.⁸¹ Petitioner's complaint is that when the City grants parking waivers under the FNUVP, it will not require a mechanism to be in place to calculate the necessary parking spaces.⁸² Petitioner argues such a mechanism is required in BMC 20.12.010. If BMC 20.12.010 requires this mechanism to calculate parking but the City's new FNUVP plan and implementing regulations allow waivers without requiring this mechanism, Petitioner argues, then the City's action is non-compliant with RCW 36.70A.130(d) because development regulations must be consistent with comprehensive plans.⁸³

Petitioner also argues the City's action is inconsistent with RCW 36.70A.130 because the Capital Facility Plan's policies command the City to provide parking for employees, customers, residents and visitors.⁸⁴ Petitioner argues that the City's new FNUVP does not

⁷⁹ Petitioner's Corrected Prehearing Brief at 7 (January 23, 2013).

⁸⁰ *Id.* at 4.

⁸¹ *Id.* at 4.

⁸² *Id.* at 4.

⁸³ *Id.* at 4.

⁸⁴ *Id.* at 4 and 5.

1 encourage more parking but creates more demand. Thus, Petitioner argues the FNUVP
2 fails to comply with RCW 36.70A.130(d) because the City reduced parking requirements
3 without calculating the impact on parking demand.⁸⁵ In his corrected reply brief, Petitioner
4 states he “stands on his Prehearing Brief.”⁸⁶

5
6 City of Bellingham and Intervenor allege as follows:

7 The City contends that Petitioner’s inconsistency claim is unwarranted because BMC
8 20.12.300 overrides BMC 20.12.020. BMC 20.12.300 B. states that “should the provisions
9 of these Sections [BMC 20.12.300 -.350] conflict with any other provisions of the BMC ...the
10 provisions of these Sections [BMC 20.12.300 -.350] shall apply.”⁸⁷ The alleged
11 inconsistency is resolved by BMC 20.12.300 which ensures that BMC 20.12.350 controls
12 parking in Fairhaven.
13

14
15 Next, the City explains the parking waivers and mechanism to provide parking in Fairhaven
16 have existed since 1994 when the City approved the Fairhaven Parking District by
17 resolution.⁸⁸ The City’s recent action of updating and adopting the new FNUVP in
18 Ordinance 2012-08-041 did not change the parking district or the requirements for the
19 district. Petitioner is barred from challenging an action taken in 1994. Lastly, Petitioner’s
20 Capital Facilities argument is misplaced because the City does not own or operate parking
21 facilities in Fairhaven nor does the City solely rely on capital facilities to manage
22 transportation and parking. It relies extensively on other transportation demand policies in
23 its comprehensive plan.⁸⁹
24

25
26 Intervenor supports the City’s arguments and adds that the City’s Parking Plan “may not
27 accommodate future development unless parking management strategies are implemented
28 or additional parking is built.”⁹⁰ The City is implementing its plan through “copious detail a
29
30

31 ⁸⁵ *Id.* at 5.

32 ⁸⁶ Petitioner’s Corrected Reply Brief at 8 (January 23, 2013).

⁸⁷ Respondent’s Prehearing Brief at 12 and 13 (February 11, 2013).

⁸⁸ *Id.* at 13.

⁸⁹ *Id.* at 15-19.

⁹⁰ Intervenor’s Prehearing Brief at 10 (February 12, 2013).

1 wide variety of parking management strategies that could be implemented to address the
2 possible parking stress.”⁹¹

3 4 **Board Discussion and Analysis**

5 The Board will not address GMA Planning Goal violations in Issue 3 because Petitioner
6 does not provide legal arguments in Issue 3 about GMA Goals in either his prehearing or
7 reply briefs, and those unbriefed sub-issues are deemed abandoned under WAC 242-03-
8 590(1).
9

10 Instead, the Board turns to Petitioner’s claim the City violated RCW 36.70A.130(d) requiring
11 that development regulation amendments be consistent with comprehensive plans. In this
12 case, when the City adopted Ordinance No. 2012-08-041, it amended BMC Chapter 20.37
13 Urban Village to add Fairhaven’s development regulations.⁹²
14

15 The Board is not persuaded by Petitioner’s claim of inconsistency between development
16 regulation and the comprehensive plan. The City’s parking regulations, found in BMC
17 20.12.010, allow the city to manage parking. This code also allows the city to waive some
18 of the parking requirements for certain situations.⁹³ As noted above, when the city adopted
19 BMC 20.37.300 through .350 as part of the FNUVP, it included another code -- BMC
20 20.37.300 B -- reconciling any differences that may be found in other Bellingham codes
21 (except for critical areas, shorelines, stormwater and infill housing). BMC 20.37.300 B
22 clarifies that if Fairhaven’s Urban Village codes conflict with other city-wide codes, then the
23 Fairhaven codes apply. Thus, the claim that BMC 20.12.010 conflicts with a new Fairhaven
24 code, simply does not exist because of the over-riding provision in BMC 20.37.300 B.
25
26
27

28 Petitioners claim that FNUVP conflicts with the City’s capital facilities plan is also
29 unpersuasive. In Bellingham’s Capital Facilities policies, CFP-68 states the city “provide
30 adequate mix of parking for employees, customers, residents and visitors in downtown and
31

32 ⁹¹ *Id.* at 10.

⁹² Respondent’s Pre-Hearing Brief, *Ex. A* at CC-76 (6) and *Ex. G* at CC 76 (117-118) (February 11, 2013).

⁹³ BMC 20.12.210 in part: “The Director shall further have authority to waive parking requirements for situations 2(a), 2(b) and 2(c) above, when consistent with an area wide parking plan and or district which have been instituted together with a mechanism for providing required parking for the area or district.”

1 urban villages . . . ,”⁹⁴ and CFP-72 “encourages government and/or private development
2 and major downtown and urban village employers to increase the parking supply in specific
3 need areas.”⁹⁵ Both policies are in a section titled “Part 9: City Public Parking Facilities” and
4 within that section the city lists its parking facilities to which these policies apply.⁹⁶ The City
5 does not list any public parking facilities in Fairhaven. The Board does not find that these
6 capital facility policies apply to the new FNUVP and thus, the City capital facilities plan does
7 not contradict the FNUVP and the City’s action does not create a RCW 36.70A.130(d)
8 violation.
9

10 **Conclusion**

11 The Board finds and concludes Petitioner did not meet his burden of proof to demonstrate
12 clearly erroneous action and non-compliance with RCW 36.70A.130(d). **Legal Issue 3 is**
13 **dismissed.**
14

15 **Issue No. 4 – Invalidity**

16 ***Does Ordinance substantially interfere with GMA Goals in RCW 36.70A?***

17 Under RCW 36.70A.302, a Determination of Invalidity is a remedy that is potentially
18 available if the Board first makes a Finding of Non-Compliance. Since the Board finds that
19 the City of Bellingham is in compliance with the GMA, entry of a Determination of Invalidity
20 is not possible in this case. **Issue 4 is dismissed.**
21
22

23 **VII. ORDER**

24 Based upon review of the Petition for Review, the arguments, briefs, and exhibits submitted
25 by the parties, the GMA and applicable guidelines, prior Board orders, and case law, the
26 Board **ORDERS:**
27
28
29
30
31
32

⁹⁴ Respondent’s Pre-Hearing Brief, Attachment 2, at CF-104 (February 11, 2013).

⁹⁵ *Id.* at CF-105

⁹⁶ *Id.* at CF-60 Existing Downtown Parking Facilities: 1. The Parkade; 2. The Railroad Avenue Garage; 3. The North Railroad Avenue Lot; 4. The South Railroad Avenue Lot; 5. The Central Avenue Lot.

- 1) Petitioner failed to carry his burden of proof to demonstrate that the City of Bellingham's adoption of Ordinance 2012-08-041 was clearly erroneous and violated RCW 36.70A.020 or RCW 36.70A.070. Petitioner's legal issues 1 through 4 alleging violation of the Growth Management Act are **dismissed**.
- 2) The Board finds and concludes that the City of Bellingham is in compliance with the Growth Management Act and this case is **closed**.

Entered this 10th day of April, 2013.

Nina Carter, Board Member

Raymond L. Paolella, Board Member

Cheryl Pflug, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁹⁷

⁹⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.

A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.